

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

VERNON N. FANNIN,

Plaintiff,

v.

LINDA SMITH, et al.,

Defendants.

NO: 4:14-CV-5091-TOR

ORDER GRANTING DEFENDANT'S
CROSS-MOTION FOR SUMMARY
JUDGMENT

BEFORE THE COURT are Plaintiff's Motion for Summary Judgment (ECF No. 6) and Defendants' Response to Plaintiff's Motion for Summary Judgment and Cross-Motion for Summary Judgment (ECF No. 9). This matter was submitted for consideration without oral argument. Plaintiff is proceeding *pro se*, but not *in forma pauperis* in this Court. Defendants are represented by Joseph T. Edwards. The Court has reviewed the briefing and the record and files herein, and is fully informed.

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BACKGROUND

On July 29, 2014, Plaintiff filed a complaint in Franklin County Superior Court alleging that Defendants had violated his civil rights. ECF No. 2-1. Plaintiff served Defendants with the complaint on August 19, 2014. ECF No. 1. The case was removed to this Court on September 4, 2014. *Id.* Plaintiff filed a motion for summary judgment on February 20, 2015. ECF No. 6. Defendants responded to that motion and filed a cross-motion for summary judgment on March 12, 2015. ECF No. 9. For the reasons discussed below, the Court grants Defendants' motion.

STANDARD OF REVIEW

Summary judgment may be granted to a moving party who demonstrates "that there is no genuine dispute as to any material fact and that the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a). The moving party bears the initial burden of demonstrating the absence of any genuine issues of material fact. *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986). The burden then shifts to the non-moving party to identify specific genuine issues of material fact which must be decided by a jury. *See Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 256 (1986). "The mere existence of a scintilla of evidence in support of the plaintiff's position will be insufficient; there must be evidence on which the jury could reasonably find for the plaintiff." *Id.* at 252.

1 For purposes of summary judgment, a fact is “material” if it might affect the
2 outcome of the suit under the governing law. *Id.* at 248. A dispute concerning any
3 such fact is “genuine” only where the evidence is such that a reasonable jury could
4 find in favor of the non-moving party. *Id.* In ruling upon a summary judgment
5 motion, a court must construe the facts, as well as all rational inferences therefrom,
6 in the light most favorable to the non-moving party. *Scott v. Harris*, 550 U.S. 372,
7 378 (2007). Only evidence which would be admissible at trial may be considered.
8 *Orr v. Bank of Am., NT & SA*, 285 F.3d 764, 773 (9th Cir. 2002).

9 **FACTS¹**

10 On September 26, 2013, Plaintiff, an inmate at the Coyote Ridge Corrections
11 Center (“CRCC”), began working in the Correctional Industries Laundry
12 (“Laundry”). ECF No. 14 at ¶ 4 (Linda Smith declaration). Defendant Linda
13 Smith, a correctional officer, was assigned to the Laundry to supervise offenders
14 working there. *Id.* at ¶ 2. While updating the photo book of offenders assigned to
15 the Laundry, Linda Smith noticed a number of offenders with the last name of
16 Fannin. *Id.* at ¶ 4. Linda Smith mentioned this to Plaintiff, who told her that the
17 only incarcerated Fannin he knew was his cousin, Jeremy Fannin. *Id.*

18 Linda Smith became concerned when Plaintiff mentioned this because her
19 son had recently been convicted of committing a crime with two other men, Evan

20 ¹ The following are the undisputed material facts unless otherwise noted.

1 Daly and Jeremy Fannin. *Id.* at ¶ 5. These two individuals were good friends with
2 her son, had visited her home, and knew about Linda Smith's family. *Id.* Linda
3 Smith "looked up Jeremy Fannin and confirmed he was the same person" who had
4 committed the crime with her son. *Id.* Linda Smith then reported the information
5 to Chuck Hudgins, General Manager of Correctional Industries; Doug Tucker,
6 another Correctional Industries staff member; and Defendant Randall Smith, a
7 Correctional Industries sergeant. *Id.* at ¶ 6. Linda Smith did not take any further
8 action at the time because she believed that Plaintiff did not know who Linda
9 Smith was or of her connection to Plaintiff's cousin as Linda Smith's son had a
10 different last name. *Id.*

11 In December 2013, Linda Smith became aware that Evan Daly was
12 scheduled for transfer to the CRCC. *Id.* at ¶ 7. Because of the personal
13 relationship between Daly and her son, Linda Smith completed a Report of
14 Contact/Relationship with an Offender form detailing that relationship. *Id.* Daly's
15 transfer was cancelled because of this information. ECF Nos. 14 at ¶ 11; 21 at
16 ¶¶ 15, 16.

17 On January 13, 2014, Plaintiff was working in the Laundry and requested to
18 leave early because his aunt was visiting. ECF Nos. 14 at ¶ 8; 12-5 (log entry from
19 "1-13-14" stating "1040 I/M Fannin back to unit for visit"). That same day,
20 Plaintiff overheard Linda Smith tell another inmate, that "she was close to kicking

1 his ass” [that other inmate’s] and that “her foot was going to be so far up his ass
2 that he would have to get her shoe removed from his ass.” ECF Nos. 8-1 at 6
3 (Plaintiff’s statement to the administrative appeal board); 13-2 (Plaintiff’s January
4 27, 2014, kite). Plaintiff told a counselor and Sergeant “Todd”² about this incident
5 the following day, January 14, 2014. ECF Nos. 8-1 at 6; 13-2. Sergeant Todd told
6 Plaintiff not to file a grievance and to first give him a chance to handle the matter.
7 ECF Nos. 8-1 at 6; 13-2. The next day, Plaintiff overheard Linda Smith tell
8 another inmate, she “knew what [Plaintiff] did” and that “if [Plaintiff] has anything
9 to say to her that [Plaintiff] should go talk to her.” ECF No. 8-1 at 6–7. Plaintiff
10 later heard from other inmates that Linda Smith was angry and had told the
11 inmates that Plaintiff “better watch out.” *Id.* at 7.³

12 On January 17, 2014, Plaintiff met with Sergeant Randall Smith to discuss
13 the matter. ECF Nos. 8-1 at 7; 21 at ¶ 10.⁴ Plaintiff provided Randall Smith with

14 ² No further identification is provided for this individual.

15
16 ³ Linda Smith denies threatening Plaintiff. ECF No. 14 at ¶ 14. For the purpose of
17 this summary judgment motion, the Court must assume Linda Smith engaged in
18 the conduct asserted by Plaintiff.

19 ⁴ Randall Smith states he became aware of Plaintiff’s complaints on January 14,
20 2014, and spoke with him that same day. ECF No. 21 at ¶ 10. In the light most

1 the names of the other offenders present when the statements were made. ECF No.
2 21 at ¶ 10. Randall Smith told Plaintiff that he would investigate the matter and
3 get back to Plaintiff after he had completed his investigation. ECF Nos. 8-1 at 6;
4 21 at ¶ 10.

5 Over the next few days, Randall Smith interviewed the three offenders
6 present. ECF No. 21 at ¶ 11. None of them could remember exactly what Linda
7 Smith had said, but they “indicated it was possible she made an inappropriate
8 comment in a joking manner.” *Id.* Randall Smith also interviewed Linda Smith
9 who indicated that she remembered joking with a group of offenders at lunch the
10 week prior, but could not remember exactly what she said. *Id.* at ¶ 12.

11 That the timing of Plaintiff’s complaint coincided with his aunt’s visit
12 suggested to Linda Smith that Plaintiff may have discovered the connection
13 between his cousin and Linda Smith’s son. ECF No. 14 at ¶ 10. She worried that
14 Plaintiff may have learned of the connection when he heard other inmates call her
15 by her former last name, the one that her son uses, or that Plaintiff’s aunt may have
16 told Plaintiff about the contact report that had cancelled Jeremy Fannin’s transfer
17 to CRCC. *Id.* at ¶¶ 10–11. Linda Smith became concerned that this information
18

19 favorable to Plaintiff, the Court assumes for purposes of this motion that the
20 conversation occurred on January 17, not on January 14.

1 may jeopardize her safety and that of her son. *Id.* at ¶ 12. Linda Smith expressed
2 these concerns to Randall Smith. ECF Nos. 14 at ¶¶ 11, 12; 21 at ¶ 15.

3 On January 24, 2014, Randall Smith told Plaintiff that he had confirmed that
4 Linda Smith made inappropriate comments on January 13 and that the matter had
5 been resolved. ECF Nos. 6 at 5; 8-1 at 7–8; 21 at ¶ 14. Based upon his
6 investigation, Randall Smith concluded that Linda Smith made the comments in
7 jest, not intending them to be threatening. *Id.* at ¶ 13. Randall Smith wrote a
8 formal letter to Linda Smith recording that he spoke with her about “bantering with
9 the offenders” and expressed that she “should always set an example of
10 professionalism Future incidents of this kind may lead to further corrective
11 action.” ECF Nos. 8-1 at 11; 12-4. A copy of the letter was placed in Linda
12 Smith’s employee file. ECF Nos. 8-1 at 11; 12-4; 21 at ¶ 13.

13 On January 24, 2014, when Randall Smith discussed the formal letter with
14 Linda Smith, she raised concerns about Plaintiff’s possible knowledge of the
15 connection between his cousin and Linda Smith’s son. Randall Smith looked into
16 the matter. ECF No. 21 at ¶ 16. He concluded that, while he did not know
17 whether Plaintiff had personal information about Linda Smith, “due to the serious
18 safety and security concerns that would be present if [Plaintiff] knew personal
19 information about [Linda Smith], [he] decided it would be best for the safety and
20 security of [Linda Smith] and the facility that [Plaintiff] not work in the same area

1 as her.” *Id.* at ¶ 17. Randall Smith also concluded that removing Plaintiff from the
2 Laundry would make it less likely that he would make the connection between his
3 cousin and Linda Smith’s son or find out personal information about Linda Smith
4 if he had not already done so. *Id.*

5 On January 27, 2014, Plaintiff was informed that he had been unassigned
6 from his Laundry employment. ECF Nos. 8-1 at 8; 12-6. Plaintiff appealed that
7 decision to the Termination/Appeal Review Panel, indicating that he believed he
8 was unassigned as punishment for complaining about Linda Smith. ECF Nos. 13
9 at ¶ 5; 13-1; 13-2. Defendant Michelle Duncan, a Correctional Program Manager,
10 oversees and sits on the appeal panel. ECF No. 13 at ¶ 2.

11 On February 3, 2014, the panel held a meeting and requested Randall Smith
12 address the panel’s concerns about Plaintiff being unassigned from the Laundry.
13 ECF No. 13 at ¶ 7. Randall Smith told the panel about the possibility that Plaintiff
14 had personal information regarding Linda Smith. ECF nos. 13 at ¶ 7; 21 at ¶ 21.
15 In light of that information, the panel upheld the decision to unassign Plaintiff from
16 the Laundry. ECF Nos. 13 at ¶ 7; 13-3.

17 Duncan informed Plaintiff that the decision to unassign him from the
18 Laundry was independent of the incident involving Linda Smith. ECF Nos. 13 at ¶
19 10; 13-4 at 8; 13-5. Duncan also informed Plaintiff that he remained eligible for
20 employment and encouraged him to work with his classification counselor to

1 obtain a new job referral in another area. ECF Nos. 13 at ¶ 10; 13-4 at 8; 13-5. On
2 February 24, 2014, Randall Smith received a new work application from Plaintiff
3 and Plaintiff was hired thereafter to work in the Textiles area at the same rate of
4 pay he had at the Laundry. ECF Nos. 12-7; 21 at ¶ 23.

5 At the February meeting, the appeals panel directed Randall Smith to have
6 Linda Smith complete a Report of Contact/Relationship with an Offender form and
7 submit it to the Superintendent for determination of what further action may to be
8 needed regarding Plaintiff's potential knowledge of Linda Smith's personal
9 information. ECF No. 13 at ¶ 9; 21 at ¶ 21. Linda Smith submitted a Report of
10 Contact form on February 3, 2014, but upon review Randall Smith sent it back to
11 Linda Smith to revise and to include additional information. ECF Nos. 14 at ¶ 13;
12 21 at ¶¶ 21–22. The revised form was received on February 20, 2014. ECF Nos.
13 14 at ¶ 13; 21 at ¶ 22. Randall Smith noted on the form that “[a]fter being
14 informed of the connection between [Plaintiff] and Jeremy Fannin and the personal
15 information know by Jeremy Fannin regarding Officer Smith's home and family, I
16 do believe this offender could create a serious problem for her working in the same
17 area.” ECF No. 13-7. The form was sent to the Superintendent for a decision on
18 how to proceed. ECF Nos. 21 at ¶ 22. On February 21, 2014, Superintendent Jeff
19 Uttecht signed the form and directed: “create facility separatee for [Plaintiff].”
20 ECF No. 13-7.

1 For an unknown reason, Duncan did not receive the document until August
2 19, 2014. ECF No. 13 at ¶ 13. At that time, she discussed the matter with
3 Superintendent Uttecht who reaffirmed the decision to enter a facility separatee
4 and to request that Plaintiff be transferred to another correctional facility. *Id.* On
5 August 21, 2014, after entering these documents, Duncan was informed by other
6 corrections personnel that Plaintiff was discussing and sharing documents from
7 this lawsuit with other inmates. ECF No. 13 at ¶ 14. These documents may have
8 included the Report of Contact form that Linda Smith had completed which
9 identified her son's relationship to Plaintiff's cousin. *See* ECF No. 21 at ¶ 24
10 (Plaintiff told Randall Smith in June 2014 that he had obtained a copy of the
11 report). After discussing the matter with Superintendent Uttecht, Duncan placed
12 Plaintiff in segregation until his transfer occurred the following week. ECF No. 13
13 at ¶ 14.

14 DISCUSSION

15 Plaintiff asserts, pursuant to 42 U.S.C. § 1983, that Defendants have violated
16 his civil rights by unlawfully retaliating against him for complaining about
17 statements made by Linda Smith. Specifically, Plaintiff contends the Defendants
18 retaliated against him by (1) removing Plaintiff from his employment in the
19 Laundry, (2) ordering that Plaintiff be transferred to a different correctional
20 facility, and (3) placing Plaintiff in segregation.

1 To establish a § 1983 claim, a claimant must prove “(1) that a person acting
2 under color of state law committed the conduct at issue, and (2) that the conduct
3 deprived the claimant of some right, privilege, or immunity protected by the
4 Constitution or laws of the United States.” *Leer v. Murphy*, 844 F.2d 628, 632–33
5 (9th Cir. 1988). A person deprives another “of a constitutional right, within the
6 meaning of section 1983, if he does an affirmative act, participates in another's
7 affirmative acts, or omits to perform an act which he is legally required to do that
8 ‘causes’ the deprivation of which [the plaintiff complains].” *Id.* at 633 (brackets in
9 the original) (quoting *Johnson v. Duffy*, 588 F.2d 740, 743 (9th Cir. 1978)).

10 The parties do not dispute that Defendants were acting under color of state
11 law. The Court therefore turns its attention to whether Defendants committed an
12 act or participated in an act that deprived Plaintiff of some federal right, privilege,
13 or immunity.

14 “Prisoners have a First Amendment right to file grievances against prison
15 officials and to be free from retaliation for doing so.” *Watison v. Carter*, 668 F.3d
16 1108, 1114 (9th Cir. 2012). “[A] viable claim of First Amendment retaliation
17 entails five basic elements: (1) An assertion that a state actor took some adverse
18 action against an inmate (2) because of (3) that prisoner's protected conduct, and
19 that such action (4) chilled the inmate's exercise of his First Amendment rights,
20 and (5) the action did not reasonably advance a legitimate correctional goal.”

1 *Rhodes v. Robinson*, 408 F.3d 559, 567–68 (9th Cir. 2005) (citing *Resnick v.*
2 *Hayes*, 213 F.3d 443, 449 (9th Cir. 2000) and *Barnett v. Centoni*, 31 F.3d 813,
3 815–16 (9th Cir. 1994)).

4 Defendants raise a defense based upon Plaintiff’s failure to carry his burden
5 on three of the above elements. First, Defendants contend that none of the named
6 Defendants acted adversely to Plaintiff in his segregation or transfer to another
7 correctional facility because those decisions were made by Superintendent Uttecht.
8 ECF No. 9 at 11–12. Second, Defendants contend that Plaintiff has failed to
9 establish that the actions undertaken were in order to retaliate against Plaintiff for
10 the complaint he made regarding Defendant Linda Smith. ECF No. 9 at 8–13.
11 Third, Defendants contend that Plaintiff has failed to show the absence of
12 legitimate penological interests in the actions undertaken. ECF No. 9 at 9–10. The
13 Court construes Defendants’ cross-motion to concede that Plaintiff engaged in
14 protected conduct by making a verbal complaint and that the adverse actions
15 chilled Plaintiff’s exercise of his First Amendment rights. The Court reviews each
16 of Defendants’ contentions in turn.

17 A. Adverse Action

18 To succeed in his claim, Plaintiff must show that Defendants took adverse
19 action against him. *Watison*, 668 F.3d at 1114. Plaintiff contends that the adverse
20 actions in this case were his unassignment from the Laundry, his transfer to

1 another correctional facility, and his segregation for a week before the transfer.
2 ECF No. 6 at 3, 5, 7. The Court must therefore inquire whether the record, taken
3 in the light most favorable to the Plaintiff, contains evidence from which a
4 reasonable factfinder could conclude that the named Defendants, acting on their
5 own or in concert with others, engaged in any of these adverse activities. *See*
6 *Brodheim v. Cry*, 584 F.3d 1262, 1270 (9th Cir. 2009) (quoting *Okwedy v.*
7 *Molinari*, 333 F.3d 339, 343 (2d Cir. 2003) (per curiam)).

8 Defendants contend that Plaintiff has not established sufficient facts to
9 demonstrate that Defendant Linda Smith acted adversely to Plaintiff because
10 Defendant Linda Smith did not make the actual decision to unassign Plaintiff from
11 the Laundry. ECF Nos. 23 at 4. Likewise, Defendants contend that none of the
12 named Defendants acted adversely to Plaintiff in his transfer and segregation
13 because those actual decisions were made by Superintendent Uttecht. ECF No. 9
14 at 11–13.

15 However, it is not necessary that a defendant make the actual decision that
16 adversely affects a plaintiff in order to establish liability. The Ninth Circuit has
17 recognized that a subordinate's liability in the § 1983 context can be established
18 not only "by some kind of direct personal participation in the deprivation, but also
19 by setting in motion a series of acts by others which the actor knows or reasonably
20 should know would cause others to inflict the constitutional injury." *Gilbrook v.*

1 *City of Westminster*, 177 F.3d 839, 854 (9th Cir. 1999). Likewise, the Ninth
2 Circuit has recognized liability in Title VII retaliation cases where “a subordinate,
3 in response to a plaintiff’s protected activity, sets in motion a proceeding by an
4 independent decision maker that leads to an adverse employment action,” or where
5 the “biased subordinate influenced or was involved in the decision or
6 decisionmaking process.” *Poland v. Chertoff*, 494 F.3d 1174, 1182 (9th Cir.
7 2007). Defendants can defeat such “cat’s paw”⁵ theory of liability by showing that
8 the adverse action was “the consequence of an entirely independent investigation.”
9 *Id.* at 1183.

10 In this light, Plaintiff could establish that Defendant Linda Smith acted
11 adversely against him by showing that she set his unassignment in motion by
12 complaining of his potential relationship to her son knowing—or that she should
13 reasonably have known—that this would cause others to engage in the adverse
14 action against him. Similarly, viewing the facts in the light most favorable to
15 Plaintiff, he may be able to establish that the named Defendants acted adversely to
16 him in his transfer and segregation if he can show they influenced or were involved

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18
19 ⁵ See *Poland*, 494 F.3d at 1182 n.5, for citation to “a discussion of the etymology
20 and acceptance” of this term.

1 with those decisions, or set those events in motion knowing what the likely result
2 would be.

3 B. Causation

4 However, in order for these claims to survive summary judgment, Plaintiff
5 must also show “a causal connection between the adverse action and the protected
6 conduct.” *Watison*, 668 F.3d at 1114. In arguing causation, Plaintiff points to the
7 fact that his unassignment from the Laundry occurred only a week after he
8 complained about Defendant Linda Smith. ECF No. 6 at 5. Plaintiff also points
9 out that his transfer was ordered on August 21, 2014, two days after this lawsuit
10 was served on Defendants. ECF No. 22 at 6. Plaintiff argues:

11 Retaliatory motive may be shown by the timing of the allegedly
12 retaliatory act and inconsistency with previous actions, as well as
13 direct evidence. *Bruce v. Ylst*, 351 F.3d 1283, 1288-1289 (9th Cir.
14 2003). When an adverse action occurs shortly after the protected
15 conduct, the 9th Circuit has held that the timing creates an inference
16 of retaliatory motive.

17 ECF No. 6 at 5.

18 Certainly, “timing can properly be considered as circumstantial evidence of
19 retaliatory intent.” *Pratt v. Rowland*, 65 F.3d 802, 808 (9th Cir. 1995); *see also*
20 *Watison*, 668 F.3d at 1114 (“[A]llegation of a chronology of events from which
retaliation can be inferred is sufficient to survive dismissal.”). However, *Bruce*
does not create an automatic inference of retaliatory motive from timing alone as

1 Plaintiff suggests. Timing is but one factor that must be examined in the totality of
2 the circumstances in evaluating a motion for summary judgment. It is Plaintiff's
3 burden to produce sufficient evidence for a reasonable jury to conclude that it is
4 more likely than not that Defendants acted with a substantial or motivating factor
5 to retaliate against Plaintiff. *See CarePartners, LLC v. Lashwa*, 545 F.3d 867, 877
6 (9th Cir. 2008). Unlike *Bruce*—where the plaintiff presented a combination of
7 incriminating statements, suspect timing, and questionable use of previously
8 dismissed evidence—Plaintiff's only evidence in this case is the timing of the
9 actions, and this alone is insufficient to raise a triable issue. *See Bruce*, 351 F.3d at
10 1289; *see also Anderson*, 477 U.S. at 252 (“The mere existence of a scintilla of
11 evidence in support of the plaintiff's position will be insufficient . . .”).

12 C. Legitimate Penological Goal

13 In *Turner v. Safley*, the Supreme Court held that “when a prison regulation
14 impinges on inmates' constitutional rights, the regulation is valid if it is reasonably
15 related to legitimate penological interests.” *Turner v. Safley*, 482 U.S. 78, 89
16 (1987). In determining whether a prison regulation is reasonably related to a
17 legitimate penological interest, courts examine four factors established in *Turner*:

18 (1) whether the regulation is rationally related to a legitimate and
19 neutral governmental objective; (2) whether there are alternative
20 avenues that remain open to the inmates to exercise the right; (3) the
impact that accommodating the asserted right will have on other
guards and prisoners, and on the allocation of prison resources; and

1 (4) whether the existence of easy and obvious alternatives indicates
2 that the regulation is an exaggerated response by prison officials.

3 *Ashker v. California Dept. of Corrections*, 350 F.3d 917, 922 (9th Cir. 2003)
4 (citations omitted). Prison officials must “put forward” a legitimate governmental
5 interest to justify their regulation and must provide evidence that the interest
6 proffered is the reason why the regulation was adopted or enforced. *Walker v.*
7 *Sumner*, 917 F.2d 382, 385 (9th Cir. 1990) (citations omitted).

8 In the retaliation context, Defendants may present evidence establishing the
9 existence of legitimate penological reasons for the alleged retaliatory conduct. *See*
10 *Pratt*, 65 F.3d at 807 (“[W]e should ‘afford appropriate deference and flexibility’
11 to prison officials in the evaluation of proffered legitimate penological reasons for
12 conduct alleged to be retaliatory.” (quoting *Sandin v. Conner*, 515 U.S. 472, 482
13 (1995)). If Defendants establish the existence of a legitimate penological goal for
14 the alleged adverse action, Plaintiff then bears the burden of “proving the absence
15 of legitimate correctional goals for the conduct of which he complains.” *Pratt*, 65
16 F.3d at 806; *see also Overton v. Bazzetta*, 539 U.S. 126, 132 (2003) (“The burden,
17 moreover, is not on the State to prove the validity of prison regulations but on the
18 prisoner to disprove it.”). Absent such a showing, Plaintiff’s claims cannot survive
19 summary judgment.
20

1 The Department of Corrections (“DOC”) has a legitimate penological goal
2 in assuring the safety and security of its employees, their families, and of the
3 correctional facility. *See, e.g., Mauro v. Arpaio*, 188 F.3d 1054, 1059 (9th Cir.
4 1999) (“... there is no doubt that protecting the safety of guards in general is a
5 legitimate interest . . .”). The question presented to the Court is whether the
6 Defendants' actions under the policy were “rational,” that is, whether the
7 Defendants might reasonably have thought their actions would advance their
8 interests in safety and security. *See id.* at 1060 (“The only question that we must
9 answer is whether the defendants’ judgment was ‘rational,’ that is, whether the
10 defendants might reasonably have thought that the policy would advance its
11 interests.”).

12 The DOC has established policy concerning relationships and contact
13 between its staff and offenders. DOC Policy 850.030; *see* ECF Nos. 8-4 at 26–30;
14 12-1. This policy cautions DOC staff “that personal relationships between their
15 immediate family and offenders or offenders’ known immediate family or
16 associates have the potential to pose conflicts and security risks at work and will be
17 avoided when known.” DOC Policy 850.030 Directive II(C). Defendant Randall
18 Smith articulated the potential conflicts and risks:

19 Offenders who obtain personal information of a staff member, or have
20 a relationship with the staff member or their family, can use the
 information and attempt to strong-arm, threaten, or coerce the staff
 member to perform unauthorized activities or provide special

1 treatment. Offenders can also use personal information to harass a
2 staff member's family or direct non-incarcerated individuals to do so.
3 Another concern is that offenders may share personal information
4 about staff members with other offenders.

5 ECF No. 21 at ¶ 4.

6 In light of these risks, correctional employees are required to report any
7 inmate relationship or contact to their Appointing Authority on a "Report of
8 Contact/Relationship with an Offender" form. DOC Policy 850.030 Directive
9 III(A)–(C). "The Appointing Authority has discretion to reassign an employee or
10 offender on a case-by-case basis to avoid potential conflicts." DOC Policy
11 850.030. Directive III(C)(1). "Efforts to reassign the offender may be made before
12 reassigning the employee." DOC Policy 850.030 Directive III(C)(1)(b).

13 DOC policy governing offender employment also states that offenders may
14 be suspended from their employment "based on security concerns." DOC Policy
15 710.400 Directive VII(A); *see* ECF No. 12-2. A CRCC Operational Memorandum
16 on Work Programs for Offenders articulates the procedures for dealing with
17 offenders in work programs. CRCC Op. Mem. 700.000; *see* ECF NO. 12-3.
18 Under this policy, supervisors "may recommend administrative reassignment,
19 termination, or layoff of an offender" CRCC Op. Mem. Procedure IV(H).
20 Offenders may appeal decisions to terminate work assignments. CRCC Op. Mem.
IV(I). Defendant Randall Smith states:

1 If an offender obtains personal information regarding a staff member
2 who works in Correctional Industries with the offender, one way
3 under DOC Policy 710.400 and CRCC Operational Memorandum
4 700.000 to address the safety and security concerns . . . is to unassign
5 the offender from the Correctional Industries position. This helps
6 limit the offender's contact with the staff member and protect the
7 safety and security of the staff member immediately and does not
8 preclude additional protective action under DOC Policy 850.030.

9 ECF No. 21 at ¶ 8.

10 It is undisputed that Plaintiff's cousin and Defendant Linda Smith's son are
11 close friends, and that Plaintiff's cousin has knowledge of personal information
12 about Defendant Linda Smith. Whether Defendant Linda Smith made
13 inappropriate comments to an inmate on January 13, 2013, and whether she may
14 have confronted Plaintiff about his complaint has no bearing on these facts or on
15 the legitimate concerns that Plaintiff may obtain personal information about
16 Defendant Linda Smith that would compromise her safety and security as well as
17 that of her family and of the facility. The Court concludes, based upon the
18 articulated policies and undisputed facts, that Defendant Randall Smith's decision
19 to unassign Plaintiff from the Laundry was rationally related to advancing
20 legitimate penological goals. Plaintiff has presented no evidence to the contrary.

Furthermore, Superintendent Uttecht was granted authority to segregate and
transfer Plaintiff as the Appointing Authority pursuant to Policy 850.030 Directive
III(C)(1). The Superintendent was informed about concerns that the close

1 relationship between Plaintiff's cousin and Defendant Linda Smith's son could
2 create a serious problem. Superintendent Uttecht chose to reassign Plaintiff to
3 avoid the potential conflict. Superintendent Uttecht also learned that Plaintiff was
4 sharing information he had learned in the course of this lawsuit, including potential
5 personal information about Defendant Linda Smith he obtained through public
6 disclosure requests. ECF Nos. 3 at ¶ 14; 21 at ¶ 24. This heightened the concerns
7 that Plaintiff was in possession of and was actively sharing information which
8 could create serious safety and security problems. The Superintendent's decision
9 to transfer Plaintiff and to segregate him until the transfer occurred in order to
10 prevent the spread of that information was rationally related to advancing
11 legitimate penological goals. Plaintiff has presented no evidence to the contrary.

12 Plaintiff bears the ultimate burden of "proving the absence of legitimate
13 correctional goals for the conduct of which he complains." *Pratt*, 65 F.3d at 806.
14 Plaintiff has presented no evidence to rebut the Defendants' showing that
15 legitimate penological concerns for the safety and security of staff, their family,
16 and the facility motivated Plaintiff's unassignment from the Laundry, his transfer
17 to another facility, and his segregation. Defendants did not clearly communicate to
18 Plaintiff the reasons for their actions and Plaintiff's frustration with the lack of
19 communication is understandable. However, because there is no evidence in the
20 record from which a reasonable factfinder could conclude that Defendants were not

1 acting to further legitimate penological goals Defendants are entitled to summary
2 judgment.⁶

3 **ACCORDINGLY, IT IS HEREBY ORDERED:**

4 1) Plaintiff's Motion for Summary Judgment (ECF No. 6) is **DENIED**.

5 2) Defendants' Response and Cross-Motion for Summary Judgment (ECF
6 No. 9) is **GRANTED**.

7 The District Court Executive is hereby directed to enter this Order, provide
8 copies to Plaintiff and Defendants' counsel, enter **JUDGMENT** for Defendants on
9 all claims, and **CLOSE** the file.

10 **DATED** April 24, 2015.



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A handwritten signature in blue ink that reads "Thomas O. Rice".

THOMAS O. RICE
United States District Judge

19 ⁶ In light of this ruling, the Court need not address whether the Defendants are also
20 entitled to qualified immunity.